



TOWN OF ACTON
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Acton, Massachusetts 01720
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Planning Board

DECISION
07-04

Verizon Wireless and Cellco Partnership
Wireless Communication Facility Special Permit

February 27, 2007

Decision of the Acton Planning Board (hereinafter the Board) on the application of Bell Atlantic Mobile of Massachusetts Corporation, Ltd., d/b/a Verizon Wireless and Cellco Partnership (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Orlando P. Capizzi, Trustee, Main Street Realty Trust. The property is located at 820 Main Street and shown on the 2006 Acton Town Atlas map C-5 as parcel 60 (hereinafter the Site).

This Decision is in response to an application for a Wireless Communications Facility Special Permit, received by the Acton Planning Department on August 29, 2006 pursuant to Section 3.10 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations for Wireless Communications Facility Special Permits (hereinafter the Rules).

The Applicant presented the application to the Board at a duly noticed public hearing on October 10, 2006. The hearing was opened and continued without discussion to November 28, 2006. The hearing was further continued on January 9, 2007, February 13, 2007, and February 27, 2007 and then closed. Mr. James A. Valeriani, Attorney at Law, represented the Applicant. Board members Gregory E. Niemyski (Chairman), Christopher R. Schaffner, Edmund Starzec, Ruth M. Martin, Michael C. Densen, and Alan R. Mertz were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 A plan entitled "Verizon Wireless, Acton North, 820 Main Street, Acton, MA 01720" consisting of five sheets, drawn by Bay State Design Associates Inc., dated June 22, 2006, with sheets T-1, C-1, and A-3 last revised on August 1, 2006, and sheets A-1 and A-2 last revised on August 30, 2006.
- 1.2 Supplemental items and documentation required by the Rules:
 - A properly executed Application for Approval of a Wireless Communication Facility Special Permit, dated 8/29/06.
 - Consent to application by Mr. Orlando P. Capizzi, Trustee for Main Street Realty Trust, dated 8/22/05.
 - Certified abutters list.
 - Filing fee.
 - Copy of the transfer certificate of title, deed, and recorded plan for the Site.

- Statements and documents intended to demonstrate the need for the proposed facility:
 - A detailed petition document with cover statements, introduction, arguments in favor of the special permit itemized by Bylaw and Rules sections, and conclusion.
 - RF Engineering Report for Proposed Wireless Communications Facility, Site Location: 820 Main Street, North Acton, Mass. from Michael Creamer, RF Engineer, Verizon Wireless, dated 8/10/06.
 - Photo simulations dated April 2006.
 - Photo simulations comparing the proposed facility to Site features.
 - A locus map.
 - An existing Verizon service coverage map.
 - An existing Verizon 982-988 Main Street service only coverage map.
 - An existing Verizon service coverage map without Verizon 982-988 Main Street service coverage.
 - An existing Verizon service coverage map with the Verizon Post Office Square antenna in use.
 - An existing Verizon PCS service coverage map with the Verizon Post Office Square antenna in use.
 - A projected coverage map for the proposed installation only.
 - A projected coverage map without Verizon 982-988 Main Street service coverage shown.
 - A projected coverage map for the proposed installation only showing a 120'-high cellular antenna and a 120'-high PCS antenna.
 - A projected coverage map for the proposed installation only showing a 120'-high cellular antenna and a 90'-high PCS antenna.
 - A projected coverage map showing the proposed installation with a 150'-high PCS antenna, and without Verizon 982-988 Main Street service coverage shown.
 - A projected coverage map showing the proposed installation with a 150'-high cellular antenna, and without Verizon 982-988 Main Street service coverage shown.
 - A projected coverage map showing the proposed installation with a 175'-high PCS antenna, and without Verizon 982-988 Main Street service coverage shown.
 - A projected coverage map showing the proposed installation with a 175'-high cellular antenna, and without Verizon 982-988 Main Street service coverage shown.
 - A combined coverage map, existing with proposed (without Verizon 982-988 Main Street service coverage but including Verizon Post Office Square service coverage).
 - A combined PCS coverage map, existing with proposed (without Verizon 982-988 Main Street service coverage but including Verizon Post Office Square service coverage).
- A valid Federal Communications Commission license through 10/01/2014.
- Requested waivers (identified within the detailed petition document).

1.3 Additional information submitted by the Applicant:

- Notice of Lease Agreement between Orlando P. Capizzi, Trustee of the Main Street Realty Trust, and Bell Atlantic Mobile of Massachusetts Corporation, Ltd., d/b/a Verizon Wireless dated July 26, 2005.
- Specifications for a Microstrip Patch and a Stripline Array.
- Pictures of wireless communication facility tower options.
- Photographs of the Site.
- Proposed Verizon Compound Elevation, dated 8/10/06.
- A letter from Ronald J. Jackson, P.E., of Bay State Design dated 8/10/06 explaining the amount of soil to be removed and reused at the Site.
- TOWAIR determination results, dated 8/29/06, showing that the antenna structure does not require registration with the Federal Communications Commission.
- Memorandum of Lease and related documents between Omnipoint Holdings, Inc. and

Cellco Partnership d/b/a Verizon Wireless for the 533 Main Street, Acton, MA wireless communication facility site, dated 2/28/02.

- Acton Board of Appeals Decision #96-17 for the 982-988 Main Street, Acton, MA Wireless Communication Facility, dated 10/10/96.
- Memorandum of Lease and related documents between Guy A. and Sheryl McKay and Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile for the 982-988 Main Street, Acton, MA wireless communication facility site, dated 8/28/96.
- A memo to Gregory Niemyski, Chairman, Acton Planning Board, from James Valeriani, Attorney for Verizon Wireless, responding to Kristin Alexander's 12/22/06 e-mail regarding issues discussed at the 11/28/06 public hearing, and staff comments, dated 1/6/07.
- Correspondence to Guy and Sheryl McKay from James A. Valeriani, Attorney for Verizon Wireless, regarding an easement at 982-988 Main Street, Acton, MA, dated 1/17/07 and 2/7/07.
- Letter to David Velez, VitalSite Services Inc. (real estate group advisor for Verizon Communications) from Kevin L. Mason, Project Manager – Cingular Wireless, regarding the 982-988 Main Street wireless communication facility, dated 1/31/07.
- Memo to Gregory Niemyski, Chairman, Acton Planning Board and Roland Bartl, Town Planner from Verizon Wireless describing antenna systems and support structure designs and requirements, dated 2/7/07.
- A memo to Gregory Niemyski, Chairman, Acton Planning Board, from James Valeriani, Attorney for Verizon Wireless, responding to staff comments and issues discussed at the 1/9/07 hearing, dated 2/8/07.
- Letter to the Acton Planning Department from Rich Weiland, Microwave Engineer, Verizon Wireless, stating running a microwave hop to the nearest utility pole, dated 2/19/07.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 9/21/06;
- Acton Engineering Department, dated 9/28/06;
- Acton Fire Chief, dated 10/10/06;
- Acton Health Director, dated 9/29/06;
- Acton Information Technology Director, dated 10/4/06 and 2/9/07;
- Acton Planning Department, dated 11/16/06, 1/8/07, and 2/9/07;
- Acton Police Chief, dated 10/4/06;
- Acton Treasurer's Office, dated 9/7/06;
- Acton Tree Warden & Municipal Properties Director, dated 9/8/06.

1.5 Other:

- E-mail to the Planning Board from Roland Bartl regarding quorum and potential conflict, dated 9/28/06.
- Letter to the Acton Board of Selectmen from Greg Niemyski asking that the Selectmen allow him to chair the Board during the 820 Main Street Wireless Communication Facility Special Permit hearings and stating that he can render an impartial decision on the matter, dated 11/6/06.
- E-mail to the Planning Board from Roland Bartl stating that the Acton Board of Selectmen have no objection to Greg Niemyski sitting on the hearing for the 820 Main Street Wireless Communication Facility Special Permit, dated 11/21/06.
- E-mail to Roland Bartl from James Valeriani, Attorney of Law for Verizon Wireless, agreeing to have the October 10, 2006 public hearing opened and immediately continued to October 24, 2006, dated 10/3/06.
- Letter to Gregory Niemyski, Chairman, Acton Planning Board, from James Valeriani, Attorney of Law for Verizon Wireless, agreeing to continue the public hearing to November 28, 2006 and extending the decision deadline to January 9, 2007, dated 10/23/06.

- Agreements to extend public hearing and decision deadlines, dated 11/30/06, 1/10/07, and 2/14/07.
- E-mail to the Planning Board from Kristin Alexander stating the use of a building located at 836 Main Street, Acton, MA, dated 12/1/06.
- E-mail to Roland Bartl from Kristin Alexander regarding whether the 982-988 Main Street wireless communication facility decision includes provisions for upgrades to the facility, dated 12/4/06.
- E-mail to the Planning Board from Roland Bartl stating that Anderson & Kreiger (Town Counsel) cannot advise the Town or the Board directly on wireless communication facility special permit applications as the firm is also counsel to telecommunication service providers, dated 12/5/06. The e-mail also includes a general public knowledge legal review paper titled "Telecommunication Facility Siting: Creative Settlement Strategies for Land Use Development Litigation, May 12, 2006."
- Court documents related to the 982-988 Main Street Wireless Communication Facility, Crown Castle Atlantic LLC, and Guy A. McKay and Sheryll McKay, 2003-2004.
- Letter to the Town of Acton from Guy McKay of Butter Brook Farm concerning the 982-988 Main Street Cell Tower, dated 1/8/07.
- E-mail to the Planning Board from Bruce Reichlen, Make 'M Wireless, as a private citizen in Acton, with a question about using wireless backhaul technology at the 982-988 Main Street wireless communication facility, dated 1/25/07.
- E-mail to Kristin Alexander from Greg Niemyski commenting on Broadcast Signal Lab's draft report on the 820 Main Street Wireless Communication Facility special permit proposal, dated 2/19/07.
- E-mail to Kristin Alexander from Bruce Reichlen, as a private citizen in Acton, commenting on Broadcast Signal Lab's draft report on the 820 Main Street Wireless Communication Facility special permit proposal, dated 2/20/07.
- E-mail to the Planning Board from Bruce Reichlen, as a private citizen in Acton, with comments on the proposal, dated 2/20/07.
- Broadcast Signal Lab report "Review of Application of Verizon Wireless for a Wireless Communications Facility at 820 Main Street, Acton, Massachusetts ", received 2/23/07.

Exhibits 1.1 through 1.3 are referred to herein as the Plan.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Applicant proposes a new wireless communication facility tower toward the rear of a 3.86-acre Site at 820 Main Street in North Acton.
- 2.2 The Site is in the Small Manufacturing (SM) District and in Zone 3 of the Groundwater Protection District.
- 2.3 A wireless communications facility tower exists nearby at 982-988 Main Street in Acton that is 175 feet high and can accommodate a maximum of six carriers. The Applicant is one of the six carriers occupying a space on this tower.
- 2.4 According to the Applicant, it cannot obtain an easement at 982-988 Main Street to perform technology and capacity upgrades to service lines.
- 2.5 The Applicant has researched the possibility of using short distance backhaul wireless link technology from a nearby street location as an alternative to the easement and found that it is not an option in this location.

- 2.6 The Applicant stated in the hearing that the 982-988 Main Street tower is "overstressed."
- 2.7 The Applicant stated that without an upgrade to its installation at 982-988 Main Street, there exists a coverage and capacity hole in its network, creating a significant gap in its network.
- 2.8 There would be a substantial duplication of coverage if the Applicant had installations on both the existing 982-988 Main Street tower and the proposed tower.
- 2.9 The Applicant has demonstrated to the Board's satisfaction that a service gap exists in the area particularly for data transmissions (PCS) and that it needs a wireless communication facility at or near the Site.
- 2.10 A wireless communications facility tower may be allowed on the Site by special permit in accordance with section 3.10 of the Bylaw.
- 2.11 The proposed tower is 120 feet in height. According to the Broadcast Signal Lab Report, a height of 140 feet would be more effective at this Site and possibly allow for more wireless companies to occupy the tower in the future. The Bylaw allows towers to be constructed to a maximum height of 175 feet to enlarge signal coverage areas and allow for the co-location of service providers to potentially reduce the number of towers needed to fill coverage gaps in town.
- 2.12 The Site is the location of an existing lattice tower, licensed by the Federal Communications Commission, owned and operated by Capizzi and Company for the purposes of radio communications. The existing tower is +/-120 feet tall. Without significant tower reinforcement, tower renovation, and disruption of the Capizzi's business operations, the existing lattice tower cannot accommodate the co-location of wireless communication facility antennas.
- 2.13 The proposed tower is a monopole with external mounted antenna arrays. Each antenna array has three (3) panels and is attached to the outside of the top of the monopole. The proposed tower is designed to also accommodate whip-type antennas for municipal purposes.
- 2.14 The proposed tower would replace the existing lattice tower; be constructed at the same height as the existing tower; support four wireless communication service providers, municipal communications equipment, and Capizzi and Company's other radio communications equipment from the lattice tower; and be relocated to the rear of the Site where it is less visible from the public road and nearby residences.
- 2.15 The proposed 120-foot high tower on the Site would be hardly visible except from 836-838 Main Street. Its top would also be visible, but not intrusive, from several rather distant locations, including from locations further north and south along Main Street and the North Acton Recreation Area, as the crane/balloon test shows that was conducted under this application. From an aesthetic and visibility viewpoint, the Site emerges as an acceptable locus for a wireless communication facility tower.
- 2.16 The proposal is for the Capizzi and Company antenna to be located at the top of the tower. Public safety is the first priority; therefore, municipal transmission devices shall be located at the top of the tower. The Capizzi and Company antenna shall be located on the tower in such a way where it shall not interfere with maximizing the wireless communications capacity of the wireless service providers and the Town.
- 2.17 The proposed 2,400 square foot ground lease compound around the proposed tower appears to be barely enough area to contain the equipment needed to support four different service providers plus municipal transmission equipment. Other wireless communication facility sites in Acton have lease (fenced) areas that encompass a minimum of approximately 700 square feet per provider.

- 2.18 The Board concludes that this additional tower will best serve the interest of Acton residents in containing tower proliferation and visibility, and the interests of the telecommunication industry, including the Applicant, to locate transmitters at strategic locations that will complete service networks.
- 2.19 The Applicant has requested waivers from the Rules, which are discussed in section 3.1 Waivers below.
- 2.20 The Site has 402 feet of frontage on Main Street. Under the Bylaw, the Board may require the installation of a sidewalk along the Site frontage.
- 2.21 Capizzi and Company, Inc. signed a Sidewalk Construction Agreement (dated 9/14/88) as an obligation under Site Plan Special Permit #11/25/87-292 to either construct a sidewalk along the Site's frontage or contribute to the Town sidewalk fund. No sidewalk exists and there is no evidence that a contribution was ever made.
- 2.22 The Board has received comments from various Town departments as listed in Exhibit 1.4 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as it deemed appropriate.
- 2.23 The Plan as amended herein and the proposed use as approved herein are appropriate for the Site; comply with the applicable Bylaw requirements; are consistent with the Master Plan; are not detrimental or injurious to the neighborhood; and are in harmony with the purpose and intent of the Bylaw, specifically Section 3.10, which seeks to minimize adverse impacts of wireless telecommunications facilities, limit the overall number of towers in support of such facilities, and promote the shared use of towers. The proposed wireless communication facility -
- a) is designed to minimize any adverse visual or economic impacts on abutters and other parties of interest, as defined in M.G.L. Ch. 40A, S.11;
 - b) cannot for technical or physical reasons be co-located on an existing wireless communications facility tower that provides similar coverage;
 - c) cannot be located at any other practicably available site that is less visible to the general public;
 - d) is not designed and constructed any larger or higher than the minimum height and size necessary to accommodate its anticipated future use and cannot be further reduced in height due to technical requirements, topography or other unique circumstances;
 - e) is sited in such a manner that it is suitably screened and, to the extent possible, not visible from residential buildings or public streets within 500 feet;
 - f) is colored so that it will, as much as possible, blend in with its surroundings when viewed from residential buildings or public streets within 500 feet;
 - g) is designed to accommodate the maximum number of users technologically practical but not less than three;
 - h) is in compliance with applicable Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission (MAC), and Massachusetts Department of Public Health (MDPH) regulations; and
 - i) complies with all applicable requirements of this Bylaw, including section 10.3.

3 BOARD ACTION

Therefore, the Board voted at its February 27, 2007 meeting to **APPROVE** the requested special permit for a stealth monopole with internally mounted antennae, subject to and with the benefit of the following waivers, Plan modifications, conditions, and limitations.

3.1 REQUESTED WAIVERS

The Applicant has requested the following waivers from the Rules:

- 3.1.1 Waivers from section 3.7.4.3 (maximum groundwater elevation tests), 3.7.5.4 (open space calculations), and 3.7.8 (erosion and sediment control plan). The waivers are GRANTED. The amount of grading, clearing, and construction of impervious area needed to construct the facility will be minimal and it is clearly apparent that none of these items are critical so as to warrant detailed investigation.
- 3.1.2 The Applicant has requested a waiver from section 3.7.5.5 of the Rules, sidewalk obligations. Under the Bylaw, the Board may require the installation of a sidewalk along the Site frontage. The Site has 402 feet of frontage on Main Street. The Rules require a sidewalk plan be shown. As part of the Capizzi & Co., Inc. Site Plan Special Permit approval in 1988 (application #11/25/87-292), the owner was required to either construct a sidewalk along the Site's frontage or contribute to the Town sidewalk fund. No sidewalk exists and there is no evidence that a contribution was ever made. Therefore, the waiver from the construction requirement is DENIED. The applicant and/or owner shall construct a sidewalk along the frontage of 820 Main Street.
- 3.1.3 Waiver from section 3.7.5.7 (driveway entrances on other lots). The waiver is GRANTED. The facility will produce very little traffic and be accessed by the existing driveway onsite; therefore, traffic will not be an issue and showing on the Plan nearby driveways and distances between driveways is unnecessary.
- 3.1.4 Waivers from sections 3.7.6.1 (stormwater drainage facilities), 3.7.6.4 (fire hydrants/fire alarm boxes), and 3.7.7 (details of drainage structures). The waivers are GRANTED. No such equipment is installed or constructed.
- 3.1.5 Waiver from section 3.7.9 (landscape plan). The waiver is GRANTED. The proposed facility is hardly visible because of its distance from area residences and public roadways and the existing vegetation that will remain in the area.
- 3.1.6 Waivers from 3.8 (water balance calculations) and 3.9 (drainage calculations). The waivers are GRANTED. These sections require information that is irrelevant to the specifics of the Plan.

3.2 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless he finds that the Plan is revised to include the following additional, corrected, or modified information. Except as otherwise provided, all such information shall be subject to the approval of the Building Commissioner. Where approvals are required from persons or agencies other than the Building Commissioner, the Applicant shall be responsible for providing evidence of such approvals to the Building Commissioner.

- 3.2.1 On Sheet T-1, change the Vicinity Map to show the correct location of the Site.
- 3.2.2 Expand the lease area or show a future expansion area on the Plan to encompass at least 2,800 square feet and provide documents that a lease is secured.
- 3.2.3 Show on the Plan any necessary easements, including access and utility easements to the facility from the public street, to fully support the facility at its maximum potential technical capacity and any upgrades to the equipment and utilities needed for maintaining and improving service and capacity of all tenants on the facility, and submit the related legal documents for Board approval.
- 3.2.4 On Sheets C-1, A-1, and A-2, show the existing private well near the proposed facility.

- 3.2.5 Show bollards placed on the parking area side of the propane tank and show details of the bollards on the Plan.
- 3.2.6 Show a lock box or suitable alternative on the compound so emergency personnel and equipment can gain access to the facility. Approval of the Plan by the Acton Fire, Police, and Information Technology Departments shall be submitted in writing prior to Plan endorsement.
- 3.2.7 Show on the Plan a six-strand fiber optic cable installed at the proposed facility and connecting to the Town's I-net.
- 3.2.8 On Sheet C-1, under "Zoning Information", change the minimum lot frontage requirement to 200 feet.
- 3.2.9 Place a note on the Plan that states all structures associated with the wireless communication facility shall be removed within one year of cessation of use.
- 3.2.10 Specify the color of the proposed tower on Sheet A-2. The color shall be a shade of gray or brown to minimize tower visibility.
- 3.2.11 Show the flood zone and all wetlands buffers on Sheet A-1.
- 3.2.12 On the Plan, show the locations, general wording, and dimensions of all proposed signs.
- 3.2.13 Submit a sidewalk plan showing a sidewalk to be constructed along the Site's frontage on Main Street, including construction details and cross sections.
- 3.2.14 On Sheet A-1, specify the utilities that will be placed underground (telephone and electric).
- 3.2.15 On Sheet A-3, change "Plan Note" 5 to describe the materials to be used in the construction of impermeable surfaces such as sidewalks and driveways.
- 3.2.16 On the Plan, show crushed stone or similar material in the fenced compound to facilitate quick infiltration.
- 3.2.17 Modify the proposed lighting to comply with Bylaw Section 10.6 and show the locations and details of the lighting on the Plan.
- 3.2.18 The following changes shall be made to the Plan as stated in the Acton Engineering Department dated 9/28/06:
- a) (Specify with a note on the Plan that) prior to the start of construction, the applicant should be required to hire a land surveyor to stakeout the proposed facility in order to certify the property line setbacks are in accordance with the plans.
 - b) A note should be added to the plans requiring the existing survey monuments such as the stone bounds to be marked in the field prior to construction. This note should also state that if these property markers are damaged or destroyed during construction that the applicant will hire a registered land surveyor to reset the monuments and certify the new locations.
 - c) (Specify with a note on the Plan that) the contractor will be required to apply for a permit to construct within a public way for any potential work in the right of way for Main Street.
 - d) The engineer should show the existing 120-foot lattice type tower on the plans.
 - e) The engineer should show the existing driveway access on Main Street on the plans.
 - f) A note should be added to the plans requiring survey monuments to be marked prior to start of construction. The note should also state that any damaged or destroyed property markers will be reset and certified by a registered land surveyor.
 - g) The engineer should add details on the plans to specify the construction requirements for

items such as but not limited to a typical driveway cross section, ground treatment within the proposed fenced area, etc.

- 3.2.19 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.3 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 3.3.1 The proposed wireless communication facility may be constructed at 820 Main Street after 180 days from the date of the Decision and only after the Applicant shows proof that other network link technologies and options cannot be used and reasonable efforts have been made but failed to obtain necessary standard utility easements to upgrade its installation at 982-988 Main Street.
- 3.3.2 The height of the proposed wireless communication facility shall be at least 140 feet up to 175 feet.
- 3.3.3 The tower shall not be illuminated at night. Show that a 175' high antenna structure at this Site shall not require illumination by the FCC.
- 3.3.4 Submit written approvals or permits from the FAA, MAC, and MDPH.
- 3.3.5 If the sidewalk required under Plan Modification 3.2.14 is not feasible without the removal of public shade trees, and if the Applicant or owner after reasonable efforts fails to obtain said permission for tree removals, the Applicant or owner shall donate to the Town \$12,060.00 for the purpose of designing and constructing sidewalks or bikeways within the Town of Acton, and for acquiring easements and land for the aforesaid purpose. This cost is based on \$30.00 per foot to retrofit existing streets with a sidewalk. The amount shall be carried in the performance guarantee.
- 3.3.6 With each new installation of an antenna array, the Building Commissioner shall require a certification that there remains sufficient room above 110 feet over ground level for a minimum overall total of four antenna arrays.
- 3.3.7 No antennae or other equipment shall be installed on the tower except those serving personal wireless communication services identified in the 1996 Telecommunications Act, or transmission equipment by the Town of Acton or any of its agencies, or by Capizzi and Company, Inc.
- 3.3.8 To the extent that there is space available on the tower, the Applicant or future owner of the tower, and the owner of the Site, shall allow other personal wireless communication services to locate, modify and maintain on the tower for a reasonable fee, and allow the Town of Acton to locate, modify and maintain transmission equipment on the tower, and at the top of the tower if requested, at no charge.
- 3.3.9 Neither the Applicant nor any tenant on the tower shall be entitled to any particular spot or elevation for its antenna arrays on the monopole as approved hereunder, or to a tenancy on this monopole versus on another monopole that the Board may approve on or near the Site in the future. Rather, the Board reserves the right to require relocations on the pole or from this pole to another pole on or near the Site, should the Board approve additional

towers or extensions of existing towers in the vicinity. All lease or rental agreements on the tower shall reference this clause.

- 3.3.10 The Applicant shall remove the monopole approved hereunder if it has been vacant for more than twelve months.
- 3.3.11 At the direction of the Board, the Applicant and other tenants shall relocate to another nearby tower if there have been sufficient vacancies on such other tower for a period exceeding 12 months, and the Applicant shall then forthwith remove the monopole approved hereunder.
- 3.3.12 The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.13 Fuel or batteries for emergency generators shall be subject to approval by the Board of Health under the operation of the Hazardous Material Control Bylaw.
- 3.3.14 No work on the Site as approved hereunder shall begin before the issuance of a building permit.
- 3.3.15 All areas outside the limits of clearing shall remain in their natural state and remain undisturbed before, during, and after construction except as shown on the Plan.
- 3.3.16 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.3.17 Submit an as-built plan to certify that the project is constructed in accordance with the approved Plan.
- 3.3.18 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court before the issuance of a building permit on the Site.

3.4 FUTURE EXTENSION IN HEIGHT

This special permit is granted for a stealth monopole with internal antennae up to a height of 175 feet, and the monopole shall be located, designed, engineered, and constructed to be structurally extendable to 175 feet and capable of accommodating the maximum number of technically feasible co-locator antennae in the portion of the pole above the tree line, as well as an equipment shelter or other enclosed space physically able to, or capable of being enlarged to, fully accommodate the maximum number of wireless service transmitters and other equipment necessary for the maximum number of technically feasible co-locators at the Site.

3.5 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

- 3.5.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.5.2 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.5.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

3.5.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading of the Site as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than one year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.5.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to M.G.L., Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant - certified mail #
Engineering Administrator
Conservation Administrator
Police Chief
Assistant Assessor

Building Commissioner
Municipal Properties Director
Town Manager
Acton Water District

Health Director
Town Clerk
Fire Chief
Owner

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